

**Immigration Symposium I: Administrative Monetary Penalties
Canadian Employment Relocation Council**

Tuesday December 15th, 2015

Royal Canadian Military Institute – 426 University Avenue, Toronto, Ontario

Speakers

- Heather Moriarty, IRCC
- Nadine Faulkner, ESDC,
- Stephen Green, Green and Spiegel (Immigration Law)
- Participants included local industry representatives: Ubisoft, Scotiabank, Air Canada, IBM, Atlas transport, Vista, Ericsson, McCain Foods, Visual FX (see Annex)

Questions from Stakeholders

- 1. For the employer compliance regime, as part of the inspections process, will the letter from the inspecting officer identify which program is being inspected, i.e. TFWP or IMP?**

Yes, 'Notice of Inspection' letters will be sent to employers notifying them of inspection and the conditions under which they will be inspected.

- 2. When would an employer only receive a warning letter?**

An employer would receive a warning letter for non-compliance, instead of a consequence (Administrative monetary penalty or ban and name publication) if after inspection, the office assessed their final point total as one point, due to either a minor violation (Type A with no previous non-compliance) or accepted voluntary disclosure reducing total points to one.

- 3. What is the potential length of the Inspection Period?**

Employers are concerned about the potential for long inspections. To ensure procedural fairness, there are several exchanges between inspecting officers and employers (Notice of Inspection, Notice of Preliminary Findings and Notice of Final Determination). This process may occur over several months while documents are requested and follow up action occurs. The regulations have embodied procedural fairness through allowing the employer a 30 day opportunity to respond between the Notice of Preliminary Finding and the Notice of Final Determination. The inspecting Departments endeavour to finalize inspections as soon as they can and, in large part, the length of an inspection period depends upon the cooperation of employers and the timeliness of their submissions.

- 4. Will employers have processing suspended while they are involved in an inspection?**

Employers are not automatically prohibited from accessing work permits during a risk-based inspection. However, if for example, the Department has concerns that the employer may not be actively engaged, or the business appears to be failing or the employer has a history of non-compliance with provincial employment laws, the approval of new work permits may be put on hold pending the outcome of an inspection on the basis of concerns as to the genuineness of the offer of employment (see R200(1)(c)(ii.1)(A) and subsection (5) for genuineness factors).

5. Will the previous consequences for non-compliance (i.e. automatic two-year ban) be applied after Administrative Monetary Penalties and varied bans come into effect on December 1, 2015?

In the months after December 2015, inspecting officers will still send out Notice of Inspection letters to review employer compliance with the previous compliance regime (imposed December, 2013) where officers would only be able to issue consequences of a two-year ban (R200(3)(h)) and posting of employer name (R209.91(1) and (3)). After a transition period, inspecting officers will send employers Notice of Inspection letters to inspect on the employer conditions since December 1, 2015 with the new inspections process and new range of consequences including publication of employer name and violation details, Administrative Monetary Penalties and varied ban lengths (R209.997, 209.98, 209.99). If a violation spans both the pre- and post-December 1, 2015 regimes, a policy decision has been taken to apply the post-December 1st consequences.

6. Who should be listed as the employer of record (and pay the fee, complete the job offer information) where more than one entity is fulfilling the employer conditions?

The employer portal allows employers with branch offices which use the same CRA business numbers (including organizational units or departments of a University) to register as branch employers. The branch offices would submit the offer of employment and would be considered the Employer of Record and therefore accountable for compliance with program conditions. In a violation scenario, the consequences would be applied to the branch office.

7. Will employers be found in non-compliance for those conditions which provide inspections authorities, e.g., 209.4?

Officers inspecting employers under the IMP will look at compliance with the conditions in 209.2. If an employer does not comply with the inspection, preventing further examination of conditions under 209.2, they may be found non-compliant under R209.4.

8. Would employers be inspected on their LMIA-exemption criteria (e.g. C-10 Significant Benefit)?

No, not directly. Inspecting officers will be reviewing employer conditions under 209.2, however should an inspection reveal that the actual occupation being performed by the foreign worker is different than the occupation stated in the Offer of Employment this could have a bearing on the employer's eligibility under exemption code C10 and could result in a finding of non-compliance with respect to "occupation" and accuracy of information.

9. Would IMP/LMIA-exempt employers be inspected on a prevailing wage?

No. This is a requirement for the TFWP.

10. How can I advise IRCC when I need to update the work permit information?

When employers need to make changes to the wage, occupation, or working conditions of the foreign national they should apply for a new work permit. In cases where changes to the conditions of the foreign national's employment could result in non-compliance, employers should also consider using the

voluntary disclosure form to identify where they may be risking non-compliance. The regime is designed to bring employers into compliance; employers actions rectify non-compliance will reflect positively on the final determination, i.e. resulting in fewer points or a positive decision.

A common question employers had was how to contact CIC in the event of changes to the employment described in the work permit, e.g. change in the location of work or wage paid.

11. When is a new work permit required?

Employers must make the distinction between those changes to the employment relationship which can be justified as part of the compliance regime and those changes to the nature of the wages, occupation and working conditions which would necessitate a new work permit application. *At present, this distinction is up to the employer's judgement and the officer's discretion in determining if the employer conditions were violated.*

12. What if the Employer Portal isn't working? Am I able to submit the old IMM5802 form instead?

Employers can email the IRCC branch responsible for administering the employer portal to request approval to submit their employment information through the IMM5802 form as per the regulatory provisions. The email address to contact when experiencing technical difficulties with the portal is CIC.EmployerPortal-Portaildelemployeur.CIC@cic.gc.ca.

Considerations

Visual Effects

The meeting included representative from largest employer of Canada's visual effects specialists. The concerns of this area included their concerns that as an emerging industry they were not accurately captured by the NOC system or understood during the LMIA process. They requested additional guidance and we have connected them to policy and operational experts in these areas. For example, Ubisoft, a visual effects company, left Quebec for Ontario due to the difficulties with the shortages list.

Senior Executives

Senior executives are a particular area of concern, particularly for how they will be considered by the compliance regime for bonuses, etc. Employers also mentioned the challenges of staffing these positions: use of Job Bank, inappropriate for senior executives.

Annex: Meeting Participants

Air Canada	Pascal	Longpre
Atlas Canada	Fred	Haladay
Baker & McKenzie LLP	Stephanie	MacIntosh
Babcock Canada Inc.	Feiya	Wang
BDO Immigration Services	Doreen	Buksner
BDO Immigration Services	Mark	Chow
Cirque du Soleil Inc.	Timothy	Morson
Canadian Employment Relocation Council	Stephen	Cryne
Enbridge	Somaya	Dimitri
Ericsson Canada Inc.	Taylor	Milliken
Ericsson Canada Inc.	Michael	Zloczewski
Green and Spiegel	Stephen	Green
Hatch Associates Ltd.	Indira	Prasad
IBM Canada Ltd.	Troy	Pariag
Infosys Limited	Vishal	Modi
Jim Lockington Consulting	Jim	Lockington
McCain Foods Limited	Terri Lynn	Oliver
McCain Foods Limited	Natalie	Wordtmann
Price Waterhouse Cooper Law LLP	Larry	Linton
Scotiabank	David	Gugliotta
Scotiabank	Shelley	Beaudry
SPINVFX	Neishaw	Ali
TD Bank Group	Judith	Duran
Ubisoft Toronto Inc.	Andrew	Gonzalez
Ubisoft Toronto Inc.	Amanda	Pelosi
Ubisoft Toronto Inc.	Annifride	Alexander
Vista Corporate Housing	Anne	Bennett
TD Bank Group	Judith	Duran

Immigration, Refugees & Citizenship (IRCC)	Heather	Moriarty
Immigration, Refugees & Citizenship (IRCC)	Ashley	Thorvaldson
Employment Social Development (ESDC)	Nadine	Faulkner